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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,412	08/18/2003	Paula G. Ray	STG-100-A	1470

7590 06/20/2006
Arnold S Weintraub
The Weintraub Group PLC
32000 Northwestern Highway
Suite 240
Farmington Hills, MI 48334

EXAMINER
RESTIFO, JEFFREY J

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/642,412	Applicant(s) RAY ET AL.	
	Examiner Jeffrey J. Restifo	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-6 and 10-12, and 14-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Fruechtenicht (US 6,279,929 B1).

With respect to claims 1, 11, 12, 14, and 15, Fruechtenicht discloses a scooter 10 comprising a front wheel assembly including a front axle 12, front wheel 11 with suspension means (or spoke plate) and rim (not numbered), a front wheel fork assembly including front fork members 13, a straight head tube 14, a T-shaped handle bar assembly 16 with left and right handles 17a,b, said handle extending through the head tube for steering said front wheel fork, a straight down tube 24, forming an angle of approximately 40 degrees with said head tube, a rear wheel assembly including a rear axle 32, a rear wheel 31 with rim, suspension means (or spoke plate), and tire (not numbered), first and second parallel, square deck support members 24a,c, to support a rider deck 21 forming an angle of approximately 110 degrees with said down tube, and a rear fork assembly including a pair of rear fork members 24a,c and forming an angle of about 145 degrees, as shown in figures 1-5. Fruechtenicht discloses the wheels as

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able to have a 20 inch diameter, which would have the axle at about 10 inches from the ground, and the rider deck as being between 4-7 inches from the ground in column 5, lines 1-4.

With respect to claim 2, Fruechtenicht recites the tires as being air-filled in column 5, line 8.

With respect to claims 3-6, Fruechtenicht recites the frame as being able to be formed from a chrome alloy in column 5, lines 61-63.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fruechtenicht, as applied to claim 14.

Fruechtenicht does not disclose the length from axle-to-axle as being 4:1 relative to the wheel diameter. Fruechtenicht disclose the scooter as able to have a range of lengths and therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to have made the scooter length of Fruechtenicht between a ratio of 4:1 to 5:1 in order to have a longer scooter for larger users.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fruechtenicht, as applied to claim 12 above, and further in view of Dickson et al. (US 5,992,864 A).

Fruechtenicht does disclose reinforcing means comprising an upper plate (not numbered) and a lower plate 22c, as shown in figures 1 and 3. Fruechtenicht does not disclose a cross plate between the rear forks. Dickson et al. does disclose a scooter 10 with rear forks 38, 40, and cross plate 52, as shown in figure 5. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the scooter of Fruechtenicht with the cross plate of Dickson et al. in order to prevent the rear forks from bending inward.

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fruechtenicht, as applied to claim 1 above, and further in view of Humlong (US 4,282,993 A).

Fruechtenicht does not disclose a bracket on said head tube for supporting a basket. Humlong does disclose a bracket 70 secured to a head tube 24 for supporting a basket B, as shown in figure 2. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the scooter of Fruechtenicht with the bracket of Humlong in order to support a basket for transporting items.

Response to Arguments

1. Applicant's arguments filed 4/21/06 have been fully considered but they are not persuasive. With respect to the applicant's arguments concerning claims 1, 11, and 14,

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all the dimensions of the deck and wheels are within the specified range recited by Fructenicht, further since the angles are not patentable unless they produce an unexpected result, and the examiner does not view the result of being out of a user's stride to be unexpected.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (571) 272-6697. The examiner can normally be reached on M-F 10-7.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey J Restifo
Primary Examiner
Art Unit 3618